IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.584 OF 2005

Mrs.Vanita Umesh Takle — Appellant

Vs.

Municipal Corporation for
Greater Mumbai & ors. — Respondents

Mr.Shishir Joshi for appellant.
Ms.Geeta Jogalekar for Resp.No.1.
Mr.Bhadrashete i/b M/s.Shanekar & Co. for Resp.No.2.
Mr.Prashant Beri i/be Beri & Co. for Resp.No.3.
Mr.Sameer Tendulkar for Resp.Nos.4 to 6.

CORAM: B.H.MARLAPALLE,J.
June 28, 2005.

ORAL ORDER:

1. Heard the learned counsel for the respective parties. This appeal arises from the order dated 1st April 2005 passed by the learned Judge of the City Civil Court at Mumbai dismissing Notice of Motion No.4248 of 2004 taken out in L.C. Suit No.4762 of 2004. The appellant is the plaintiff and it was contended that Final Plot No.232, T.P.S. - III, Opposite Lokmanya Vidya Mandir, S.Keer Marg, Mahim, Mumbai was occupied by various persons for the last so many years, some of them being tenants and others who had acquired the structure from the original tenants. The plaintiff claimed to be one of the

occupants who are not on TP record and she had a tin shed which she was occupying since 1984-85. As per her somewhere in 1990 the shed was handed over to defendant no.4 for a temporary period as the plaintiff was mainly residing at her matrimonial home at Nala Sopara. She claimed that the defendant no.4 subsequently vacated the same but continued to keep some belongings on request. It is the plaintiff's case that defendant no.4 managed to enter his name in the Corporation record and thus claimed his eligibility for allotment of transit accommodation by defendant no.1. On this the plaintiff raised the dispute and claimed that the transit accommodation ought to have been allotted to her and not to defendant no.4. Defendant nos.5 and 6 claim that the said shed was transferred by defendant no.4 in their favour much prior to 1994.

2. In the Notice of Motion the plaintiff prayed for an injunction against defendant no.2 from demolishing the suit premises i.e. Mapla Wadi, Patra Shed, Opp. Lokmanya Vidya Mandir, Final Plot No.232, T.P.S. - III, S. Keer Marg, Mahim, Mumbai. In addition injunction was also prayed for by way of directions against defendant nos.2 and 3 for entering

into a Tripartite Agreement for permanent alternate ownership accommodation i.e. Flat No.24, B-Wing, 4th floor of the proposed building in lieu of the suit premises only with the plaintiff and nobody else. The trial Court noted that the plaintiff could not make out a prima facie case for the reliefs prayed for in the notice of motion.

3. The defendant no.2 is an affected party in asmuch as if the said shed is not vacated, the proposed construction cannot proceed further and, therefore, the entire resettlement plan would come to a standstill. There does not appear to be any dispute between the defendant nos.2 and 3 and the main dispute is between the plaintiff and the defendant no.4 and the said dispute can be decided on merits in the pending suit, by the trial Court. In the mean while allotment letter for transit accommodation has been issued in favour of the defendant no.4 by defendant no.2 but no transit accommodation has been given in possession of the defendant no.1 as yet. The defendant no.4 disputes this position. Be that as it may, this appeal could be disposed off by directing the expeditious trial of the pending suit and the handing over of the suit

shed to defendant no.2 but without prejudice to the rights of the respective parties which may be finally adjudicated in the said suit. The plaintiff has an apprehension that allotment of transit accommodation in favour of defendant no.4 may defeat her claim even in the suit and even if the suit is finally decided in her favour. These apprehensions need not come in the way of disposal of this appeal as well as the pending suit on merits.

4. It is, therefore, directed that the plaintiff will hand over the said shed to defendant no.2 within a period of four weeks and in the mean while the plaintiff may apply to the trial court for appointment of Court commissioner. The defendant no.2 shall reserve flat no.24-B on the 4th floor of the proposed building of tenants' rehabilitation scheme and on its completion during the pendency of the suit the same shall be handed over to the Registrar of the trial court who shall act as the court receiver. The allotment of the said flat shall be ultimately subject to the final decision in the suit and the allotment of transit quarter to defendant no.4 will not in any way influence the claim of the plaintiff for her eligibility.

5. The appeal is disposed off in terms of the above directions and the impugned order would stand merged with this order. Trial of L.C. Suit No.4762 of 2004 is expedited.

(B.H.MARLAPALLE,J.)